

BEFORE THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

In the Matter of: )  
)  
PUBLIC HEARING AND CONSIDERATION OF )  
THE IMPOSITION OF PENALTIES AGAINST ) FINDINGS AND ORDER  
)  
**THE CITY OF FORTUNA** )  
)  
PURSUANT TO COMPLIANCE ORDER )  
IWMA BR 02-01 )  
)  
(PUBLIC RESOURCES CODE 41850) )

A duly convened public hearing before the California Integrated Waste Management Board ("CIWMB") having been held on July 19, 2005, in Sacramento, California, in which the City of Fortuna participated, and based on the testimony and other evidence presented at that hearing and based on the oral and written arguments made by the parties, City of Fortuna and Staff of CIWMB,

THE CIWMB DOES HEREBY MAKE THE FOLLOWING FINDINGS:

1. Public Resources Code (PRC) Section 41780 requires each City or County Source Reduction and Recycling Element (SRRE) to include an implementation schedule that shows how the City or County shall divert 50 percent of all solid waste on and after January 1, 2000, through source reduction, recycling, and composting activities.

- 1       **2.**     PRC Section 41825 requires the CIWMB to review each City, County, and Regional  
2             Agency's Source Reduction and Recycling Element at least every two years.
- 3       **3.**     PRC Section 41825 provides that if the CIWMB finds that the City, County, or  
4             Regional Agency has failed to implement its SRRE, the CIWMB shall issue an order  
5             of compliance with a specific schedule for achieving compliance that shall include  
6             those conditions which the CIWMB determines to be necessary for the jurisdiction to  
7             complete in order to implement its SRRE.
- 8       **4.**     PRC Section 41850 provides that if after holding a public hearing and issuing an  
9             order of compliance pursuant to Section 41825, the CIWMB finds that the City,  
10            County, or Regional Agency has failed to make a good faith effort to implement its  
11            SRRE, the Board may impose administrative civil penalties upon the jurisdiction of  
12            up to ten thousand dollars (\$10,000) per day until the jurisdiction implements the  
13            element.
- 14       **5.**     Based on the staff review of the jurisdiction's implementation of programs identified  
15             in its SRRE, the CIWMB determined at a public hearing held on September 17, 2002,  
16             that the City of Fortuna had not made a good faith effort to implement the programs  
17             as identified in their SRRE because it had failed to adequately handle diversion of  
18             waste from its commercial sector and had achieved a diversion rate of only 34% for  
19             the year 2000, and issued Compliance Order No. IWMA BR02-01.
- 20       **6.**     The compliance order included specific requirements that the City was to meet,  
21             including working with the CIWMB to develop a Local Assistance Plan, with  
22             expanded and new programs designed to achieve achieve a 50% diversion rate, which  
23             the City would agree to by December 31, 2002.
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1 7. The City of Fortuna submitted that Local Assistance Plan on December 24, 2002 with  
2 a workplan listing specific programs that it was to implement by specified deadlines.

3 8. Based on evidence presented in today's hearing, the Board determined that the City of  
4 Fortuna failed to comply with the Board's Compliance Order Number IWMA BR 02-  
5 01. Despite the fact that the City recently took substantial measures to comply with  
6 the Compliance Order and implement the Local Assistance Plan, those measures  
7 failed to bring the City's overall performance to the level of good faith effort, defined  
8 by Public Resources Code §41850, to implement its source reduction and recycling  
9 element.  
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12 BASED UPON THESE FINDINGS, THE CIWMB DETERMINED TO IMPOSE PENALTIES  
13 IN THE FOLLOWING AMOUNTS PURSUANT TO PUBLIC RESOURCES CODE  
14 SECTION 41850:  
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16 1. A one time penalty amount of \$5000.  
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18 2. In addition, the Board determined that if the City fails to achieve by October 31,  
19 2005, compliance with the Local Assistance Plan (LAP), it will be penalized \$200 per  
20 day commencing on today's date, July 19, 2005, through the date the City and Board  
21 staff agree that the tasks due to be implemented in the LAP have been implemented.

22 3. The Executive Director of the CIWMB shall determine whether the City has achieved  
23 compliance by October 31, 2005. If the Executive Director determines that the City  
24 achieved this requirement, all penalties, including the initial one time penalty amount  
25 of \$5000, shall be suspended. If the Executive Director determines that the City has  
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not achieved this requirement, all penalties up to the date of determination shall be immediately due and payable. Penalties for non-compliance accruing after that date shall be due and payable on a monthly basis.

4. Board staff is directed to provide technical assistance to the City as necessary, particularly as it relates to commercial sector activities.

THIS ORDER SHALL BE EFFECTIVE 30 DAYS FROM SERVICE UPON THE CITY

SO ORDERED by the California Integrated Waste Management Board, on the 19th day of July, 2005, in Sacramento, California, by the following vote:

AYES:	Chair Marin; Board Members Peace, Washington, and Mule.
NOES:	None
ABSTAIN:	None
ABSENT:	None

DATED:

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Rosario Marin  
Chair